

§ 930.42

the Secretary finds reasonable and likely to be incurred by the Board during a fiscal period, each handler shall pay to the Board assessments on all cherries handled, as the handler thereof, during such period: *Provided*, a handler shall be exempt from any assessment only on the tonnage of handled cherries that either are diverted by destruction at the handler's facilities according to § 930.59 or are cherries represented by grower diversion certificates issued pursuant to § 930.58(b) and acquired by handlers as described in § 930.59.

(d) The Secretary, after consideration of the recommendation of the Board, shall fix the rate of assessment to be paid by each handler during the fiscal period in an amount designed to secure sufficient funds to cover the expenses which may be approved and incurred during such period or subsequent period as provided in paragraph (c) of this section. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all cherries handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments, the Board may accept the payment of assessments in advance, and may borrow money for such purposes.

(e) Assessments not paid within a time prescribed by the Board may be made subject to interest or late payment charges, or both. The period of time, rate of interest, and late payment charge will be as recommended by the Board and approved by the Secretary: *Provided*, That when interest or late payment charges are in effect, they shall be applied to all assessments not paid within the prescribed period of time.

(f) Assessments shall be calculated on the basis of pounds of cherries handled. The established assessment rate may be uniform, or may vary dependent on the product the cherries are used to manufacture. In recommending annual

assessment rates, the Board shall consider:

(1) The differences in the number of pounds of cherries utilized for various cherry products; and

(2) The relative market values of such cherry products.

(g) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

[61 FR 49942, Sept. 24, 1996, as amended at 67 FR 51714, Aug. 8, 2002]

§ 930.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, the Board, with the approval of the Secretary, may carry over all or any portion of such excess into subsequent fiscal periods as a reserve. Such reserve funds may be used to cover any expenses authorized by this part, and to cover necessary expenses of liquidation in the event of termination of this part. If any such excess is not retained in a reserve, it shall be refunded proportionately to the handlers from whom the excess was collected. Without an additional reserve level approved by the Secretary, the amount held in reserve may not exceed approximately one year's operational expenses. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such a manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practicable, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the Board pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the Board and its members to account for all receipts and disbursements.

QUALITY CONTROL

§ 930.44 Quality control.

(a) *Quality standards.* The Board may establish, with the approval of the Secretary, such minimum quality and inspection requirements applicable to

Agricultural Marketing Service, USDA

§ 930.50

cherries as will contribute to orderly marketing or be in the public interest. If such requirements are adopted, no handler shall process cherries into manufactured products or sell manufactured products in the current of commerce unless such cherries and/or such cherries used in the manufacture of products meet the applicable requirements as evidenced by certification acceptable to the Board. The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

(b) *Inspection and certification.* Whenever the handling of any cherries requires inspection pursuant to this part, each handler who handles cherries shall cause such cherries to be inspected by the appropriate division of USDA, and certified by it as meeting the applicable requirements of such regulation: *Provided*, That inspection and certification shall be required for cherries which previously have been so inspected and certified only if such cherries have been regraded, resorted, repackaged, or in any other way further prepared for market. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the Board a copy of the certificate of inspection issued with respect to such cherries.

RESEARCH, MARKET DEVELOPMENT AND PROMOTION

§ 930.48 Research, market development and promotion.

The Board, with the approval of the Secretary, may establish or provide for the establishment of production and processing research, market research and development, and/or promotional activities, including paid advertising, designed to assist, improve or promote the efficient production and processing, marketing, distribution, and consumption of cherries subject to this part. The expense of such projects shall be paid from funds collected pursuant to this part and the income from such funds.

REGULATIONS

§ 930.50 Marketing policy.

(a) *Optimum supply.* On or about July 1 of each crop year, the Board shall hold a meeting to review sales data, inventory data, current crop forecasts and market conditions in order to establish an optimum supply level for the crop year. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years reduced by average sales that represent dispositions of exempt cherries and restricted percentage cherries qualifying for diversion credit for the same three years, unless the Board determines that it is necessary to recommend otherwise with respect to sales of exempt and restricted percentage cherries, to which shall be added a desirable carry-out inventory not to exceed 20 million pounds or such other amount as the Board, with the approval of the Secretary, may establish. This optimum supply volume shall be announced by the Board in accordance with paragraph (h) of this section.

(b) *Preliminary percentages.* On or about July 1 of each crop year, the Board shall establish a preliminary free market tonnage percentage which shall be calculated as follows: from the optimum supply computed in paragraph (a) of this section, the Board shall deduct the carry-in inventory to determine the tonnage requirements (adjusted to a raw fruit equivalent) for the current crop year which will be subtracted from the current year USDA crop forecast or by an average of such other crop estimates the Board votes to use. If the resulting number is positive, this would represent the estimated overproduction which would be the restricted tonnage. This restricted tonnage would then be divided by the sum of the crop forecast(s) for the regulated districts to obtain a preliminary restricted percentage, rounded to the nearest whole number, for the regulated districts. If subtracting the current crop year requirement, computed in the first sentence from the current crop forecast, results in a negative number, the Board shall establish a preliminary free market tonnage percentage of 100 percent with a preliminary restricted percentage of zero. The